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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

WARREN LEE WANZO,

Defendant and Appellant.

A152938

(Contra Costa County
Super. Ct. No. 5-170471-7)

Warren Lee Wanzo challenges two aspects of the sentence imposed following his conviction for robbery. We remand the sentencing issues to the trial court.

BACKGROUND

A March 2017 information charged appellant with one count of second degree robbery (Pen. Code, § 211).¹ The information also alleged four prior convictions as strike offenses (§ 667, subds. (d) & (e), § 1170.12, subds. (b) & (c)); serious felony convictions (§ 667, subd. (a)(1)); and, as to three of the prior convictions, violent felony convictions (§ 667.5, subd. (a)). Two additional prior convictions were alleged as prison priors (§ 667.5, subd. (b)). A jury subsequently found appellant guilty on the robbery

¹ All undesignated section references are to the Penal Code. The information also charged a codefendant.

count.² In a bifurcated proceeding, the trial court found all of the prior conviction allegations true.

In September 2017, the trial court sentenced appellant to an aggregate prison term of 45 years to life. The sentence consisted of a 25-year-to-life term on the robbery count and consecutive five-year terms for each of the four prior serious felony enhancements. The trial court imposed and stayed sentences on the two prison priors.

DISCUSSION

I. *Senate Bill No. 1393*

Appellant argues the sentences on the four prior serious felony enhancements should be remanded pursuant to new legislation, Senate Bill No. 1393 (2017–2018 Reg. Sess.) (hereafter, S.B. 1393). We agree.

“On September 30, 2018, the Governor signed S.B. 1393 which, effective January 1, 2019, amend[ed former] sections [667, subdivision (a) and 1385, subdivision (b)] to allow a court to exercise its discretion to strike or dismiss a prior serious felony conviction for sentencing purposes. (Stats. 2018, ch. 1013, §§ 1–2.)” (*People v. Garcia* (2018) 28 Cal.App.5th 961, 971.) Under the version of these statutes in effect at the time of appellant’s sentencing, “the court [was] required to impose a five-year consecutive term for ‘any person convicted of a serious felony who previously has been convicted of a serious felony’ [citation], and the court ha[d] no discretion ‘to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667.’ ” (*Ibid.*) “S.B. 1393 applies retroactively to all cases or judgments of conviction in which a five-year term was imposed at sentencing, based on a prior serious felony conviction, provided the judgment of conviction is not final when S.B. 1393 [became] effective on January 1, 2019.” (*Garcia, supra*, 28 Cal.App.5th at pp. 971–972.)

The People conceded that, should S.B. 1393 become effective before appellant’s judgment becomes final (as is the case), the law applies retroactively and remand is

² The underlying facts are not relevant to this appeal.

appropriate. The law became effective January 1, 2019. (See §§ 667, 1385.) We will remand to allow the trial court to exercise its discretion under S.B. 1393.

II. *Prior Prison Terms*

The trial court imposed but stayed a one-year term on each of the prior prison term enhancements. The parties agree such a sentence is unauthorized. “Section 667.5(b) provides for an enhancement of the prison term for a new offense of one year for each ‘prior separate prison term served for any felony,’ with an exception not applicable here Once the prior prison term is found true within the meaning of section 667.5(b), the trial court may not stay the one-year enhancement, which is mandatory unless stricken.” (*People v. Langston* (2004) 33 Cal.4th 1237, 1241.)

Appellant urges this court to strike the improperly-stayed enhancements. The People argue we should remand to let the trial court determine whether to impose or strike the prior prison term enhancements, noting the trial court stated earlier in the sentencing hearing, “This Court declines to strike any of the defendant’s . . . prison priors.” In light of this statement, we agree with the People that remand is appropriate.

DISPOSITION

The judgment is affirmed and the matter is remanded to allow the trial court to exercise its discretion to strike or dismiss appellant’s prior serious felony convictions for purposes of section 667, and further exercise its discretion to impose or strike the section 667.5, subdivision (b), prior prison term enhancements.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BURNS, J.

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